IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKORE MANSANGJI VERAJI

Versus

STATE OF GUJARAT

Appearance:

MR JAL S UNWALA for MR PK JANI for Petitioner

MR MUKESH PATEL for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/03/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The notification dated 10th December, 1997 of the State Government and the consequent order passed by the

District Development Officer concerned dated 22nd December 1997 are subject matter of challenge in this special civil application.

#. The petitioner is the Sarpanch of Group Gram Panchayat, Mahiyal and Sankadi. Under the impugned notification, the State Government divided the Group Gram Panchayat in two Gram Panchayats, namely Gram Panchayat, Mahiyal and Gram Panchayat, Sankadi.

#. Relying on the decision of the apex court in the case of Baldev Singh and others v. State of Himachal Pradesh and others, reported in AIR 1987 SC 1239 and of this court in the case of Bhalod Gram Panchayat and anr. v. State of Gujarat and ors., reported in 1986 GLR 247, the learned counsel for the petitioner contended that this notification has been made without strictly following the procedure as laid down in sub-section 2 of Section 7 of the Gujarat Panchayats Act, 1993. In his submission only after consultation with the Taluka Panchayat, District Panchayat and village Panchayat concerned, if already constituted, the competent authority can recommend inclusion within or exclusion from village any local area or otherwise alteration of limits of any village or recommend cessation of any local area to a village to the Governor for exercise of his powers under clause (g) of Article 243 of the Constitution of India. In this case, the Gram Panchayat concerned though has been constituted, was not consulted by the State Government before passing of the impugned order.

#. The learned counsel for the respondent contended that the Resolution of the Gram Panchayat whereunder it is resolved against bifurcation of the Group Gram Panchayat, has been considered by the State Government before passing of the impugned notification and provisions of sub-section 2 of Section 7 of the Act stood complied with.

#. From the reply to the special civil application, I find that the Government has relied upon the Resolution No.31 of the Gram Panchayat dated 1st December 1990. Under this Resolution, the Gram Panchayat has recommended for bifurcation of two villages. It is further revealed from the reply that the local M.L.A. recommended for bifurcation of the Gram Panchayat. But the new elected body of the Gram Panchayat, under its Resolution No.50 dated 4.10.96 has recommended otherwise. This Resolution has been considered but merely by considering this Resolution, it cannot be said that compliance of provisions of sub-section 2 of Section 7 of the Act has

been made. From the reply, I find that the Government is influenced by Resolution No.31 dated 1.12.90 and recommendation of M.L.A. but effective consultation with the Gram Panchayat concerned has not been made. If in this way and manner the matters are being dealt with by the State Government, then these provisions as contained in sub-section 2 of Section 7 of the Act, 1993, will become nugatory. The provisions have some purpose and there should have been effective consultation i.e. the original Gram Panchayat should have been consulted. In the reply to the special civil application, the respondents have not given out any reason, good, bad, or indifferent as to why the Resolution of the Gram Panchayat concerned resolving thereunder not to bifurcate the Gram Panchayat has not been accepted.

#. In the result, this special civil application succeeds and the same is allowed and the notification of the Government dated 10.12.97 and the consequential order dated 22.12.97 of the District Development Officer, are quashed and set and set aside. The respondent No.1 is free to pass a fresh order after having effective consultation with the Gram Panchayat concerned. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)